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**CRAIG YATES**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CRAIG YATES,  
Plaintiff,  
v.  
BANGKOK THAI EXPRESS, INC., a  
California Corporation dba BANGKOK  
THAI EXPRESS; and DONALD J.  
KELLEHER and DONNA B. KELLEHER,  
Co-Trustees of THE KELLEHER FAMILY  
TRUST of 1990, u/d/t dated July 14, 1990,  
Defendants.

) ) **CASE NO.**  
 ) ) **Civil Rights**  
 ) ) **COMPLAINT FOR INJUNCTIVE RELIEF**  
 ) ) **AND DAMAGES:**  
 ) ) **1<sup>st</sup> CAUSE OF ACTION:** For Denial of  
Access by a Public Accommodation in  
Violation of the Americans with Disabilities Act  
of 1990 (42 U.S.C. §12101, *et seq.*)  
 ) ) **2<sup>nd</sup> CAUSE OF ACTION:** For Denial of Full  
and Equal Access in Violation of California  
Civil Code §§54, 54.1 and 54.3  
 ) ) **3<sup>rd</sup> CAUSE OF ACTION:** For Denial of  
Accessible Sanitary Facilities in Violation of  
California Health & Safety Code §19955, *et seq.*

**4<sup>th</sup> CAUSE OF ACTION:** For Denial of Access to Full and Equal Accommodations, Advantages, Facilities, Privileges and/or Services in Violation of California Civil Code §51, *et seq.* (The Unruh Civil Rights Act)

## DEMAND FOR JURY

1 Plaintiff CRAIG YATES, complains of defendants BANGKOK THAI EXPRESS, INC.,  
2 a California Corporation dba BANGKOK THAI EXPRESS; and DONALD J. KELLEHER and  
3 DONNA B. KELLEHER, Co-Trustees of THE KELLEHER FAMILY TRUST of 1990, u/d/t  
4 dated July 14, 1990 and alleges as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical  
7 disabilities, of which class plaintiff CRAIG YATES and the disability community are members,  
8 for failure to remove architectural barriers structural in nature at defendants' BANGKOK THAI  
9 EXPRESS, a place of public accommodation, thereby discriminatorily denying plaintiff and the  
10 class of other similarly situated persons with physical disabilities access to, the full and equal  
11 enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and  
12 accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the  
13 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,  
14 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

15 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about  
16 June 4, 2013 and August 8, 2013, was an invitee, guest, patron, customer at defendants'  
17 BANGKOK THAI EXPRESS, in the City of San Rafael, California. At said times and place,  
18 defendants failed to provide proper legal access to the restaurant, which is a "public  
19 accommodation" and/or a "public facility" including, but not limited to the entrance and  
20 restrooms. The denial of access was in violation of both federal and California legal  
21 requirements, and plaintiff CRAIG YATES suffered violation of his civil rights to full and equal  
22 access, and was embarrassed and humiliated.

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1 **JURISDICTION AND VENUE:**

2       3.     **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.  
 3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
 4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same  
 5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel  
 6 California law, whose goals are closely tied with the ADA, including but not limited to violations  
 7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*  
 8 *seq.*, including §19959; California Building Code.

9       4.     **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is  
 10 founded on the facts that the real property which is the subject of this action is located at/near  
 11 857 4<sup>th</sup> Street, in the City of San Rafael, County of Marin, State of California, and that plaintiff's  
 12 causes of action arose in this county.

13 **PARTIES:**

14       5.     Plaintiff CRAIG YATES is a “physically handicapped person,” a “physically  
 15 disabled person,” and a “person with physical disabilities” (hereinafter the terms “physically  
 16 disabled,” “physically handicapped” and “person with physical disabilities” are used  
 17 interchangeably, as these words have similar or identical common usage and legal meaning, but  
 18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term “physically  
 19 handicapped persons” and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other  
 20 statutory measures refer to protection of the rights of “physically disabled persons”). Plaintiff  
 21 CRAIG YATES is a “person with physical disabilities,” as defined by all applicable California  
 22 and United States laws. Plaintiff CRAIG YATES is a triplegic. Plaintiff CRAIG YATES relies  
 23 on a wheelchair to travel about in public. Plaintiff CRAIG YATES has no control over his left  
 24 lower extremity, right lower extremity and left upper extremity, and plaintiff has very limited use  
 25 of his right extremity: can use his wheelchair joystick; eat; can lift no more than approximately  
 26 ten (10) pounds; and has major loss of rotation. All Activities stated herein are with limited use  
 27 of only his right hand, arm and shoulder.

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1 Consequently, plaintiff CRAIG YATES is a member of that portion of the public whose rights  
2 are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled “Access to  
3 Public Accommodations by Physically Handicapped Persons”) and the protections of the Unruh  
4 Civil Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the  
5 Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

6. **DEFINITIONS:**

- 7 a. **ADAAG** - The Americans with Disabilities Act Accessibility Guidelines  
8 of 1990; and The Americans with Disabilities Act Accessibility Guidelines  
9 2010 revision. (Used where applicable).
- 10 b. **ARCHITECTURAL BARRIERS** - Architectural barriers are physical  
11 features that limit or prevent people with disabilities from obtaining the  
12 goods or services that are offered. They can include but are not limited to  
13 the following examples: parking spaces that are too narrow to  
14 accommodate people who use wheelchairs; a step or steps at the entrance  
15 or to part of the selling space of a store; round doorknobs or door hardware  
16 that is difficult to grasp; aisles that are too narrow for a person using a  
17 wheelchair; electric scooter, or a walker; a high counter or narrow  
18 checkout aisles at a cash register, and fixed tables in eating areas that are  
19 too low to accommodate a person using a wheelchair or that have fixed  
20 seats that prevent a person using a wheelchair from pulling under the table.  
21 Excerpted from the “*ADA Guide for Small Businesses*” with an  
22 interlineation modification. <http://www.ada.gov/smbustxt.htm>.  
23 (The descriptive use of the word “barriers” as used herein is synonymous  
24 with architectural barriers).
- 25 c. **ELEMENTS** - An architectural or mechanical component of a building,  
26 facility, space, or site (e.g., telephone, curb ramp, door, flush valve,  
27 drinking fountain, seating, or water closet, toilet seat, dispensers) and/or  
28 placement or lack thereof.

- d. **CATEGORICAL ARCHITECTURAL BARRIERS** - Are elements and facilities which are, or can be architectural barriers standing alone or in combination with one another where the element(s)/facility(s) is/are noncomplying or where the combination thereof creates a category. For example: such as a parking lot, entrance, restroom, lobby, guest room, dining area.
- e. **PHYSICAL FEATURES** - Are synonymous with “Elements.”
- f. **FACILITY** - All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.
- g. **ENTRANCE** - Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).
- h. **CLEAR FLOOR SPACE** - The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.
- i. **ACCESSIBLE ROUTE** - A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.
- j. **ACCESSIBLE SPACE/PATH OF TRAVEL** - Space that complies with ADAAG guidelines and is synonymous with accessible route.
- k. **NON COMPLYING** - Not complying with ADAAG and/or the “Readily Achievable Standard” of CFR 34.306.

1       7. Defendants DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees  
2 of THE KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990 are the owners of the  
3 real property (land and building) located at or near 857 4<sup>th</sup> Street, San Rafael, California 94901.

4       8. Defendants BANGKOK THAI EXPRESS, INC., a California Corporation dba  
5 BANGKOK THAI EXPRESS; and DONALD J. KELLEHER and DONNA B. KELLEHER, Co-  
6 Trustees of THE KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990 (hereinafter  
7 alternatively collectively referred to as "defendants") are the owners and operators, lessors and/or  
8 lessees, or agents of the owners, lessors and/or lessees, of the public accommodation known as  
9 BANGKOK THAI EXPRESS, located at/near 857 4<sup>th</sup> Street, San Rafael, California, or of the  
10 building and/or buildings which constitute said public accommodation.

11       9. At all times relevant to this complaint, defendants BANGKOK THAI EXPRESS,  
12 INC., a California Corporation dba BANGKOK THAI EXPRESS; and DONALD J.  
13 KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE KELLEHER FAMILY TRUST  
14 of 1990, u/d/t dated July 14, 1990, own and operate in joint venture the subject BANGKOK  
15 THAI EXPRESS as a public accommodation. This business is open to the general public and  
16 conducts business therein. The business is a "public accommodation" or "public facility" subject  
17 to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code  
18 §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

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1       10. At all times relevant to this complaint, defendants BANGKOK THAI EXPRESS,  
 2 INC., a California Corporation dba BANGKOK THAI EXPRESS; and DONALD J.  
 3 KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE KELLEHER FAMILY TRUST  
 4 of 1990, u/d/t dated July 14, 1990 are jointly and severally responsible to identify and remove  
 5 architectural barriers at the subject BANGKOK THAI EXPRESS pursuant to Code of Federal  
 6 Regulations title 28, section 36.201(b), which states in pertinent part:

7                   **§ 36.201       General**

8                   (b) *Landlord and tenant responsibilities.* Both the landlord  
 9 who owns the building that houses a place of public  
 10 accommodation and the tenant who owns or operates the place of  
 11 public accommodation are public accommodations subject to the  
 requirements of this part. As between the parties, allocation of  
 responsibility for complying with the obligations of this part may  
 be determined by lease or other contract.

12                   28 CFR §36.201(b)

13 **PRELIMINARY FACTUAL ALLEGATIONS:**

14       11. The BANGKOK THAI EXPRESS is a restaurant, located at/near 857 4<sup>th</sup> Street,  
 15 San Rafael, California 94901. The BANGKOK THAI EXPRESS, its entrance and restrooms,  
 16 and its other facilities are each a “place of public accommodation or facility” subject to the  
 17 barrier removal requirements of the Americans with Disabilities Act. On information and belief,  
 18 each such facility has, since July 1, 1970, undergone “alterations, structural repairs and  
 19 additions,” each of which has subjected the BANGKOK THAI EXPRESS and each of its  
 20 facilities, its entrance and restrooms to disability access requirements per the Americans with  
 21 Disabilities Act Accessibility Guidelines (ADAAG), and the California Building Code.

22       12. On or about and before the year of 1990 through 2003, defendants’ and each of  
 23 them purchased and/or took possessory control of the premises now known as the BANGKOK  
 24 THAI EXPRESS. At all times prior thereto, defendants’ and each of them were aware of their  
 25 obligation prior to the close of escrow, or upon taking possessory interest that public  
 26 accommodations had a duty to identify and remove architectural barriers and were aware that the  
 27 BANGKOK THAI EXPRESS was not accessible to the disabled. Nevertheless, defendants’ and  
 28 each of them, operated the subject restaurant as though it was accessible.

1       13. At all times stated herein, defendants' and each of them with the knowledge that  
2 each of them had a continuing obligation to identify and remove architectural barriers where it  
3 was readily achievable to do so, failed to adopt a transition plan to provide better and/or  
4 compliant access to the subject accommodation.

5       14. At all times referred to herein and continuing to the present time, defendants, and  
6 each of them, advertised, publicized and held out the BANGKOK THAI EXPRESS being  
7 handicapped accessible and handicapped usable.

8       15. On or about June 4, 2013 and August 8, 2013, plaintiff CRAIG YATES  
9 was an invitee and guest at the subject BANGKOK THAI EXPRESS, for purposes of food and  
10 beverage. After sending notice (initial) letters on June 7, 2013, to the landlord and/or tenant  
11 about access problems, plaintiff returned to the subject BANGKOK THAI EXPRESS, for the  
12 purposes of participating in the goods and services provided and to see whether this public  
13 accommodation had been made more accessible. A quarter of a century was now passing since  
14 the Americans with Disabilities Act of 1990 ("ADA") took effect.

15       16. On or about June 4, 2013, plaintiff CRAIG YATES encountered the following  
16 architectural barriers at the entrance of BANGKOK THAI EXPRESS and as a legal result had  
17 the following adverse experiences: The entry did not have a level landing, but a slope with a  
18 doorway which did not have sufficient strike side clearance to easily open the door. Plaintiff  
19 CRAIG YATES had to make multiple movements in order to position his wheelchair.  
20 A difficult task. While attempting to open the door, "Molly" came and opened the door for  
21 plaintiff. He then entered.

22       17. On or about June 4, 2013, plaintiff CRAIG YATES encountered the following  
23 architectural barriers at/in the men's restroom at BANGKOK THAI EXPRESS and as a legal  
24 result had the following adverse experiences: Plaintiff CRAIG YATES had asked where the  
25 restrooms were located. He was informed to use the women's restroom, because the men's  
26 restroom was not accessible. Plaintiff CRAIG YATES used the women's restroom which had no  
27 signage. He felt awkward and worried if a female might approach. A table was next to the water  
28 closet and the flush control was on the inside.

1 The table made it difficult for plaintiff CRAIG YATES to position himself in his wheelchair and  
 2 empty his leg bag. He had to strain/stretch to lean over and push the water closet handle. There  
 3 were two (2) soap dispensers. None of the soap dispensers were properly placed. Plaintiff  
 4 CRAIG YATES had to strain to reach the dispenser on the front wall.

5 18. On or about June 7, 2013, plaintiff CRAIG YATES wrote two (2) letters.  
 6 He wrote one letter to the landlord and one letter to the manager of Bangkok Thai Express.  
 7 He wrote the following:

8 “Recently, I visited Bangkok Thai Express. It’s a very pleasant restaurant  
 9 with good food. I enjoyed the restaurant very much even though there are a  
 10 few access problems. I use a wheelchair and entering the restaurant was very  
 11 difficult because there was no “strike side”. Strike side is the clear space next  
 12 to a door so that when the door is closed a person in a wheel chair, like me,  
 13 can angle a wheelchair which makes opening the door a lot easier.  
 14 Fortunately, a staff member noticed me at the door and came to open the door  
 15 for me. Also, I had a few problems in the women’s restroom, which is the  
 16 accessible restroom. First, there was a big table next to the toilet which  
 17 prevented me from getting next to toilet, second, the flush control was on the  
 18 inside of the toilet next to the wall which prevented me from reaching it and  
 19 third, the pipes under the sink were not wrapped. There is one more thing I  
 20 would like to mention. The sign on the door for the accessible restroom states  
 21 “WOMEN”, so as to prevent any confusion for who can use the restroom and  
 22 to prevent any embarrassment and discomfort when a male uses the restroom,  
 23 you should change the name on the men’s restroom door to read “Unisex”  
 24 and on the women’s restroom door a “Unisex” sign with the ISA emblem  
 25 underneath it. The ISA emblem is a white wheelchair symbol on a blue  
 26 background and the “Unisex” sign has a symbol of both a man and a women  
 27 on it. I thought the landlord and the tenant should know about this. That’s  
 28 why I wrote this identical letter to both of you. It’s like letting the right hand  
 know what the left hand is doing! If you both put your heads and hands  
 together, I know the two of you can fix these problems. Anyway, please  
 write me when you get this letter, tell me what you plan on doing and when  
 it will be done. Give me a date If you are not the one in charge or don’t have  
 the responsibility to do it, would you make sure this letter goes to the person  
 in charge or who can make decisions on what to do. Thanks!”

26 Plaintiff CRAIG YATES did not receive a response.  
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1       19. On or about August 8, 2013, plaintiff CRAIG YATES returned to the BANGKOK  
2 THAI EXPRESS. "Molly" told plaintiff CRAIG YATES that she had received both of his  
3 letters but she had not given the owner his letter because of the following reasons: the owner was  
4 reluctant to make the repairs; she also told plaintiff CRAIG YATES that she was looking for a  
5 unisex sign and would make the women's restroom the unisex accessible restroom, but her  
6 supplier had not had one in stock; after twenty (20) years, the landlord had raised her rent up to  
7 30%; and that she is now on a month-to-month lease. Plaintiff CRAIG YATES had suggested  
8 that she get a CASP report and give it to the owner and a copy to him (plaintiff).

9       20. On or about August 8, 2013, plaintiff CRAIG YATES saw that no changes had  
10 been made to the entry door at the subject restaurant. However, he was able to enter the  
11 restaurant this time without a problem, because the door was propped open.

12       21. On or about August 8, 2013, plaintiff CRAIG YATES encountered the following  
13 architectural barriers at the women's restroom and as a legal result had the following adverse  
14 experiences: The table still hadn't been moved. All of the same barriers as on June 4, 2013,  
15 were still there. Plaintiff CRAIG YATES struggled to position his wheelchair and himself to  
16 empty his leg bag. He strained to bend forward to reach the flush control with his only good  
17 hand. He then fought to reach the same soap dispenser. He was disappointed, frustrated and  
18 physically and mentally uncomfortable with the situation and what it had caused him, especially  
19 the fact that it would be so easy to remove the table from the women's restroom.

20       22. On or about August 21, 2013, plaintiff CRAIG YATES wrote the manager of  
21 Bangkok Express a follow-up to his discussion with her on August 8, 2013. He wrote the  
22 following:

23       "This is a follow up to the conversation we had when I was there for dinner  
24 on August 8, 2013. As I suggested to you it would be a good idea to retain  
25 a CASP inspector. Retaining an inspector would be a very good idea because  
26 that way you can have a thorough inspection performed and know what  
27 things should be repaired. You mentioned that the landlord was reluctant to  
28 spend money on repairs and would not help with the expense of a report.  
You should know that not only is the tenant responsible for providing access  
but the landlord has a shared responsibility with you, the tenant, to provide  
access.

1 I understand what you said about being on a month to month lease and the  
2 landlord could ask you to leave at anytime. That being the case he should  
3 share in the expense of the report and it is to his advantage when he rents to  
4 future tenants. You should give a copy of this letter to the landlord and ask  
5 him for assistance. Please write me as soon as you receive this letter and let  
6 me know when you will get a Casp inspector and when you plan to have this  
7 work completed. Thanks”

8 Plaintiff CRAIG YATES did not receive a response.

9 23. As of September 15, 2013, plaintiff CRAIG YATES wished to return to the  
10 BANGKOK THAI EXPRESS. He was deterred from doing so because he had believed that  
11 because he did not receive any response to his letter of August 21, 2013, that no remedial work  
12 had been done.

13 24. Therefore, at said times and place, plaintiff CRAIG YATES, encountered the  
14 following architectural barriers as stated herein or lack thereof and/or “elements” and “facilities”  
15 which constituted architectural barriers and/or categorical architectural barriers and a denial of  
16 the proper and legally-required access to a public accommodation to persons with physical  
17 disabilities including, but not limited to:

- 18 a. lack of an accessible entrance;
- 19 b. lack of a handicapped-accessible women’s public restroom;
- 20 c. lack of a handicapped-accessible men’s public restroom;
- 21 d. lack of signage, policies, procedures and guidelines to ensure the person(s)  
22 with disabilities to the maximum extent possible have an opportunity to  
23 share in the same goods, services and opportunities as those afforded to  
24 able-bodied persons; and
- 25 e. on personal knowledge, information and belief, other public facilities and  
26 elements too numerous to list were inaccessible to plaintiff(s) and for use  
27 by other persons with physical disabilities similarly situated.

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1        25. Specific architectural barriers encountered by plaintiff CRAIG YATES at  
2 times and place herein in addition to categorical architectural barriers stated herein and the  
3 respective difficulties experienced by plaintiff as stated herein, the barriers include but are not  
4 limited to:

5        **ENTRANCE**

6        •        no International Symbol of Accessability (ISA) signage  
7        •        no level landing at entrance (approximately 4.6% slope; and door sets back  
8                   approximately 5 ½');  
9        •        inaccessible entrance;  
10        •        lack of level landing due to a slope at the entrance;  
11        •        excessive door pressure (approximately 7.0 plus lbs.);  
12        •        almost no strike side clearance at door (approximately 5");

13        **RESTROOMS**

14        •        noncomplying men's and women's restrooms; (unisex restroom and/or  
15                   single accommodation for the disabled);  
16        •        door knobs and latches that require grasping, turning or pinching;  
17        •        toilet that is not usable as whole or in part (men's restroom centerline is at  
18                   approximately 15"; 17" between lavatory and water closet; and toilet is 16"  
19                   high);  
20        •        no grab bar(s) in men's restroom;  
21        •        flush control of toilet on the narrow side between wall and toilet tank  
22                   wrong side in men's and women's restrooms;  
23        •        noncomplying water closet placement from wall men's restroom;  
24        •        dispenser(s) located too high/not usable men's and women's restrooms;  
25        •        soap dispenser(s) too high women's restroom;  
26        •        paper towel dispenser(s) too high or not properly placed in the men's and  
27                   women's restrooms (approximately 50");

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- toilet paper dispenser(s) at incorrect placement (mounted over toilet in the women's restroom);
- noncomplying mirror in the men's and women's restrooms (approximately 49");
- lavatory p-trap not insulated in the men's restroom;
- insufficient clear space men's and women's restrooms (the door swings inwardly);
- table in the women's restroom which blocks the water closet; and
- women's restroom was for the disabled, but signage is for "women."

There was no signage that the restroom was accessible and was unisex.

11 Therefore, as a legal result of encountering each of said elements, plaintiff experienced one, all,  
12 or a combination of the following difficulties: stress, strain, difficulty, and discomfort to his  
13 upper extremities in attempting to and/or using said elements also causing anxiety,  
14 disappointment, and embarrassment.

15 26. At all time as stated herein, plaintiff CRAIG YATES encountered architectural  
16 barrier(s) as stated herein and/or had personal knowledge of said barrier(s) and knew it would be  
17 a futile gesture to attempt to overcome it/them because of his disability.

18           27. At all times and place, each architectural element as stated herein that did  
19 not strictly comply with or substantially comply with the ADAAG minimum requirements  
20 constituted an architectural barrier which precluded plaintiff CRAIG YATES from full and equal  
21 opportunities afforded to non disabled persons to the goods and services of the BANGKOK  
22 THAI EXPRESS.

23       28. Plaintiff CRAIG YATES was and is deterred from returning to BANGKOK THAI  
24 EXPRESS so long as architectural barrier(s) complained of that he encountered, as stated herein  
25 are not ADAAG compliant.

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1       29.    At said times and place, when plaintiff CRAIG YATES encountered the  
2 architectural barriers as stated herein, plaintiff CRAIG YATES in seeing a barrier(s) and/or  
3 attempting to overcome the barriers to gain access experienced any one or combination of  
4 physical difficulty, discomfort, embarrassment, stress, strain, fatigue, anger, annoyance and  
5 disappointment. This arose from plaintiff's physical inability to effectively use his upper  
6 extremities to easily overcome the architectural barriers as stated herein. This constitutes a  
7 denial of full and equal access to the subject public accommodation and a denial of the  
8 opportunity to independently enjoy and participate in the opportunities, goods and services  
9 offered to non disabled persons and patrons, invitees and guests.

10       30.    Said architectural barrier(s) as stated herein deprived and deterred plaintiff  
11 CRAIG YATES the same full and equal access that a non wheelchair user/non disabled person  
12 would enjoy while engaging in the goods, service and opportunities offered at the subject  
13 BANGKOK THAI EXPRESS.

14       31.    At all times stated herein, the existence of architectural barriers at defendants'  
15 place of public accommodation evidenced "actual notice" of defendants' intent not to comply  
16 with the Americans with Disabilities Act of 1990 either then, now or in the future.

17       32.    At all times stated herein, defendants, and each of them, did not act as reasonable  
18 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not  
19 removing architectural barriers that would foreseeably prevent plaintiff CRAIG YATES from  
20 receiving the same goods and services as able bodied people and some of which may and did pose  
21 a threat of harm and/or personal injury to people with disabilities. Therefore as a legal result of  
22 defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff suffered  
23 bodily injury in the general form of stress, strain, pain, and fatigue either individually or in  
24 combination of one or more.

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1       33.     As a legal result of defendants BANGKOK THAI EXPRESS, INC., a California  
 2 Corporation dba BANGKOK THAI EXPRESS; and DONALD J. KELLEHER and DONNA B.  
 3 KELLEHER, Co-Trustees of THE KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14,  
 4 1990's failure to act as a reasonable and prudent public accommodation in identifying, removing  
 5 or creating architectural barriers, policies, practices and procedures that denied access to plaintiff  
 6 and other persons with disabilities, plaintiff suffered the damages as alleged herein.

7       34.     As a result of the denial of equal access to defendants' facilities due to the acts and  
 8 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
 9 public facilities, plaintiff CRAIG YATES suffered violations of plaintiff's civil rights, including  
 10 but not limited to rights under Civil Code §§51, 52, 54, 54.1, 54.3, *et seq.* And, plaintiff CRAIG  
 11 YATES suffered bodily injury on or about June 4, 2013 and August 8, 2013, including, but not  
 12 limited to, fatigue, stress, strain and pain in wheeling and attempting to and/or transferring up, on,  
 13 down, to, over, around and through architectural barriers. Specifically, as a legal result of  
 14 defendants negligence in the design, construction and maintenance of the existing women's  
 15 restroom by not moving the table in it, which blocks the water closet, plaintiff suffered  
 16 continuous, repetitive and cumulative trauma to his right upper extremity while attempting to  
 17 reach up, over and to the side to empty his leg bag and then to flush the toilet.

18       35.     Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,  
 19 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,  
 20 embarrassment, upset, anger, frustration, disappointment and worry, expectedly and naturally  
 21 associated with a person with physical disabilities encountering architectural barrier(s) as stated  
 22 herein and being denied access, all to his damages as prayed hereinafter in an amount within the  
 23 jurisdiction of this court. No claim is being made for mental and emotional distress over and  
 24 above that is usually associated with the encountering of architectural barriers and legally  
 25 resulting in adverse experiences. No expert testimony regarding this usual mental and emotional  
 26 distress will be presented at trial in support of the claim for damages.

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1       36. Defendants' and each of their, failure to remove the architectural barriers  
2 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public  
3 accommodation, and continues to create continuous and repeated exposure to substantially the  
4 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.

5       37. Plaintiff CRAIG YATES was denied his rights to equal access to a public facility  
6 by defendants BANGKOK THAI EXPRESS, INC., a California Corporation dba BANGKOK  
7 THAI EXPRESS; and DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of  
8 THE KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, because defendants  
9 BANGKOK THAI EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS;  
10 and DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE KELLEHER  
11 FAMILY TRUST of 1990, u/d/t dated July 14, 1990 maintained a restaurant without access for  
12 persons with physical disabilities to its facilities, including but not limited to the entrance and  
13 restrooms, and other public areas as stated herein, and continue to the date of filing this complaint  
14 to deny equal access to plaintiff and other persons with physical disabilities in these and other  
15 ways.

16       38. Construction alterations, if any, carried out by defendants have also triggered  
17 access requirements under both California law and the Americans with Disabilities Act of 1990.

18       39. Defendants may have intentionally undertaken to modify and alter existing  
19 building(s), and may have failed to make them comply with accessibility requirements under the  
20 requirements of ADAAG and California Building Code.

21       40. Defendants have been negligent in their affirmative duty to identify the  
22 architectural barriers complained of herein and negligent in the removal of some or all of said  
23 barriers.

24       41. Because of defendants' violations, plaintiff and other persons with physical  
25 disabilities are unable to use public facilities such as those owned and operated by defendants on a  
26 "full and equal" basis unless such facility is in compliance with the provisions of the Americans  
27 with Disabilities Act of 1990, Civil Code §51, Civil Code §54.1 and Health & Safety Code  
28 §19955, *et seq.* and other accessibility law as pled herein.

1 Plaintiff seeks an order from this court compelling defendants to make the BANGKOK THAI  
 2 EXPRESS accessible to persons with disabilities.

3       42. Plaintiff, as described hereinbelow, seeks injunctive relief to require the  
 4 BANGKOK THAI EXPRESS to be made accessible to meet the requirements of both California  
 5 law and the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as  
 6 defendants operate the BANGKOK THAI EXPRESS as a public facility.

7       43. Plaintiff believes that even with service of the summons and complaint on  
 8 defendant(s) and each of them, that defendant(s) will not , under their “continuing obligation”  
 9 immediately undertake remedial action to identify and remove architectural barriers.

10       44. Plaintiff CRAIG YATES seeks damages for violation of his civil rights on June 4,  
 11 2013 and August 8, 2013 and seeks statutory damages of not less than \$4,000, pursuant to Civil  
 12 Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3, for each day after his visit that  
 13 the trier of fact (court/jury) determines was the date that some or all remedial work should have  
 14 been completed under the standard that the landlord and tenant had an ongoing duty to identify  
 15 and remove architectural barriers where it was readily achievable to do so, which deterred plaintiff  
 16 CRAIG YATES from returning to the subject public accommodation because of his knowledge  
 17 and/or belief that neither some or all architectural barriers had been removed and that said  
 18 premises remains inaccessible to persons with disabilities whether a wheelchair user or otherwise.  
 19 The acts and omission of defendants, and each of them, in failing to provide the required  
 20 accessible public facilities at the time of plaintiff’s visit and injuries, indicate actual and implied  
 21 malice toward plaintiff, and despicable conduct carried out by defendants, and each of them, with  
 22 a willful and conscious disregard for the rights and safety of plaintiff and other similarly situated  
 23 persons, and justify a trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to  
 24 make a more profound example of defendants, and each of them, to other operators and landlords  
 25 of other restaurants and other public facilities, and to punish defendants and to carry out the  
 26 purposes of the Civil Code §§ 51, 51.5 and 54.

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1       45. Plaintiff is informed and believes and therefore alleges that defendants  
2 BANGKOK THAI EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS;  
3 and DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE KELLEHER  
4 FAMILY TRUST of 1990, u/d/t dated July 14, 1990, and each of them, caused the subject  
5 building(s) which constitute the BANGKOK THAI EXPRESS to be constructed, altered and  
6 maintained in such a manner that persons with physical disabilities were denied full and equal  
7 access to, within and throughout said building(s) of the BANGKOK THAI EXPRESS and were  
8 denied full and equal use of said public facilities. Furthermore, on information and belief,  
9 defendants have continued to maintain and operate said restaurant and/or its building(s) in such  
10 conditions up to the present time, despite actual and constructive notice to such defendants that  
11 the configuration of BANGKOK THAI EXPRESS and/or its building(s) is in violation of the civil  
12 rights of persons with physical disabilities, such as plaintiff CRAIG YATES, and other members  
13 of the disability community. Such construction, modification, ownership, operation, maintenance  
14 and practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and  
15 Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

16       46. Defendants' actual and constructive notice that the physical configuration of the  
17 facilities including, but not limited to, architectural barriers constituting the BANGKOK THAI  
18 EXPRESS and/or building(s) was in violation of the civil rights of persons with physical  
19 disabilities, such as plaintiff, includes, but is not limited to, coming into contact with public -  
20 accommodations with accessible elements and facilities since January 26, 1991, communications  
21 with invitees and guests, plaintiff CRAIG YATES himself, owners of other restaurants, hotels,  
22 motels and businesses, notices they obtained from governmental agencies upon modification,  
23 improvement, or substantial repair of the subject premises and other properties owned by these  
24 defendants, newspaper articles and trade publications regarding the Americans with Disabilities  
25 Act of 1990 and other access laws, public service announcements by former U.S. Attorney  
26 General Janet Reno between 1993 and 2000, and other similar information.

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1 Defendants' failure, under state and federal law, to make the BANGKOK THAI EXPRESS  
 2 accessible is further evidence of defendants' conscious disregard for the rights of plaintiff and  
 3 other similarly situated persons with disabilities. Despite being informed of such effect on  
 4 plaintiff and other persons with physical disabilities due to the lack of accessible facilities,  
 5 defendants, and each of them, knowingly and willfully refused to take any steps to rectify the  
 6 situation and to provide full and equal access for plaintiff and other persons with physical  
 7 disabilities to the subject restaurant. Said defendants, and each of them, have continued such  
 8 practices, in conscious disregard for the rights of plaintiff and other persons with physical  
 9 disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants had  
 10 further actual knowledge of the architectural barriers referred to herein by virtue of the demand  
 11 letter addressed to the defendants and served concurrently with the summons and complaint. Said  
 12 conduct, with knowledge of the effect it was and is having on plaintiff and other persons with  
 13 physical disabilities, constitutes despicable conduct in conscious disregard of the rights and safety  
 14 of plaintiff and of other similarly situated persons, justifying the imposition of treble damages per  
 15 Civil Code §§52 and 54.3.

16       47. Plaintiff CRAIG YATES and the disability community, consisting of persons with  
 17 disabilities, would, could and will return to the subject public accommodation when it is made  
 18 accessible to persons with disabilities.

19 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC  
 20 ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH  
 21 DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

22 (On behalf of Plaintiff CRAIG YATES, and Against Defendants BANGKOK THAI  
 23 EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS; and  
 24 DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE  
 25 KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, inclusive)  
 26 (42 U.S.C. §12101, *et seq.*)

27       48. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
 28 the allegations contained in paragraphs 1 through 47 of this complaint.

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1       49. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.  
 2 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully  
 3 protect:

4       some 43 million Americans with one or more physical or mental  
 5 disabilities; [that] historically society has tended to isolate and  
 6 segregate individuals with disabilities; [that] such forms of  
 7 discrimination against individuals with disabilities continue to be a  
 8 serious and pervasive social problem; [that] the nation's proper  
 9 goals regarding individuals with disabilities are to assure equality of  
 10 opportunity, full participation, independent living and economic  
 11 self-sufficiency for such individuals; [and that] the continuing  
 12 existence of unfair and unnecessary discrimination and prejudice  
 13 denies people with disabilities the opportunity to compete on an  
 14 equal basis and to pursue those opportunities for which our free  
 15 society is justifiably famous.

16       50. Congress stated as its purpose in passing the Americans with Disabilities Act of  
 17 1990 (42 U.S.C. §12102):

18       It is the purpose of this act (1) to provide a clear and comprehensive  
 19 national mandate for the elimination of discrimination against  
 20 individuals with disabilities; (2) to provide clear, strong, consistent,  
 21 enforceable standards addressing discrimination against individuals  
 22 with disabilities; (3) to ensure that the Federal government plays a  
 23 central role in enforcing the standards established in this act on  
 24 behalf of individuals with disabilities; and (4) to invoke the sweep  
 25 of Congressional authority, including the power to enforce the 14th  
 26 Amendment and to regulate commerce, in order to address the  
 27 major areas of discrimination faced day to day by people with  
 28 disabilities.

29       51. As part of the Americans with Disabilities Act of 1990, Public Law 101-336  
 30 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services  
 31 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public  
 32 accommodations identified for purposes of this title was:

33       (7) PUBLIC ACCOMMODATION - The following private  
 34 entities are considered public accommodations for purposes of this  
 35 title, if the operations of such entities affect commerce -

36                   ---  
 37       (B) a restaurant, bar or other establishment serving food or drink.

38       42 U.S.C. §12181(7)(B)

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1       52. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated against  
 2 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
 3 privileges, advantages, or accommodations of any place of public accommodation by any person  
 4 who owns, leases, or leases to, or operates a place of public accommodation.”

5       53. The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
 6 42 U.S.C. §12182(b)(2)(a) are:

7                   (I) the imposition or application of eligibility criteria  
 8 that screen out or tend to screen out an individual with a disability  
 9 or any class of individuals with disabilities from fully and equally  
 10 enjoying any goods, services, facilities, privileges, advantages, or  
 accommodations, unless such criteria can be shown to be necessary  
 for the provision of the goods, services, facilities, privileges,  
 advantages, or accommodations being offered;

11                  (ii) a failure to make reasonable modifications in  
 12 policies, practices, or procedures, when such modifications are  
 13 necessary to afford such goods, services, facilities, privileges,  
 14 advantages or accommodations to individuals with disabilities,  
 unless the entity can demonstrate that making such modifications  
 would fundamentally alter the nature of such goods, services,  
 facilities, privileges, advantages, or accommodations;

15                  (iii) a failure to take such steps as may be necessary to  
 16 ensure that no individual with a disability is excluded, denied  
 17 services, segregated or otherwise treated differently than other  
 18 individuals because of the absence of auxiliary aids and services,  
 unless the entity can demonstrate that taking such steps would  
 19 fundamentally alter the nature of the good, service, facility,  
 privilege, advantage, or accommodation being offered or would  
 result in an undue burden;

20                  (iv) a failure to remove architectural barriers, and  
 21 communication barriers that are structural in nature, in existing  
 22 facilities . . . where such removal is readily achievable; and

23                  (v) where an entity can demonstrate that the removal of  
 24 a barrier under clause (iv) is not readily achievable, a failure to  
 25 make such goods, services, facilities, privileges, advantages or  
 26 accommodations available through alternative methods if such  
 27 methods are readily achievable.

28 The acts of defendants set forth herein were a violation of plaintiff's rights under the ADA, Public  
 29 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective  
 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code  
 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

1       54.     The removal of the barriers complained of by plaintiff as hereinabove alleged were  
 2 at all times after January 26, 1992 "readily achievable" as to the subject building(s) of  
 3 BANGKOK THAI EXPRESS pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information  
 4 and belief, if the removal of all the barriers complained of herein together was not "readily  
 5 achievable," the removal of each individual barrier complained of herein was "readily  
 6 achievable." On information and belief, defendants' failure to remove said barriers was likewise  
 7 due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182  
 8 (b)(2)(A)(i)and (ii).

9       55.     Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily  
 10 accomplishable and able to be carried out without much difficulty or expense." The statute  
 11 defines relative "expense" in part in relation to the total financial resources of the entities  
 12 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that  
 13 plaintiff complains of herein were and are "readily achievable" by the defendants under the  
 14 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was  
 15 not "readily achievable" for defendants to remove each of such barriers, defendants have failed to  
 16 make the required services available through alternative methods which were readily achievable.

17       56.     On information and belief, construction work on, and modifications of, the subject  
 18 building(s) of BANGKOK THAI EXPRESS occurred after the compliance date for the Americans  
 19 with Disabilities Act, January 26, 1992, independently triggering access requirements under Title  
 20 III of the ADA.

21       57.     Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
 22 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights  
 23 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis  
 24 of disability in violation of this title or have reasonable grounds for believing that plaintiff is  
 25 about to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning to  
 26 or making use of the public facilities complained of herein so long as the premises and  
 27 defendants' policies bar full and equal use by persons with physical disabilities.

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2       58. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a  
3 disability to engage in a futile gesture if such person has actual notice that a person or  
4 organization covered by this title does not intend to comply with its provisions." Pursuant to this  
5 section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about  
6 August 8, 2013, but on information and belief, alleges that defendants have continued to violate  
7 the law and deny the rights of plaintiff and of other persons with physical disabilities to access this  
8 public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of  
9 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such  
10 facilities readily accessible to and usable by individuals with disabilities to the extent required by  
11 this title."

12       59. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights  
13 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement  
14 the Americans with Disabilities Act of 1990, including but not limited to an order granting  
15 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being  
16 deemed to be the prevailing party.

17 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS  
IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**  
18 (On Behalf of Plaintiff CRAIG YATES, and Against Defendants BANGKOK THAI  
EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS; and  
19 DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE  
KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, inclusive)  
20 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

21       60. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the  
22 allegations contained in paragraphs 1 through 59 of this complaint.

23       61. At all times relevant to this action, California Civil Code §54 has provided that  
24 persons with physical disabilities are not to be discriminated against because of physical handicap  
25 or disability. This section provides that:

26               (a) Individuals with disabilities . . . have the same rights as  
27 the general public to full and free use of the streets, highways,  
sidewalks, walkways, public buildings, medical facilities, including  
28 hospitals, clinics, and physicians' offices, and other public places.

1       62.    California Civil Code §54.1 provides that persons with disabilities shall not be  
 2 denied full and equal access to places of public accommodation or facilities:

3               (a)(1) Individuals with disabilities shall be entitled to full  
 4 and equal access, as other members of the general public, to  
 5 accommodations, advantages, facilities, medical facilities, including  
 6 hospitals, clinics, and physicians' offices, and privileges of all  
 7 common carriers, airplanes, motor vehicles, railroad trains,  
 8 motorbuses, streetcars, boats, or any other public conveyances or  
 9 modes of transportation (whether private, public, franchised,  
 licensed, contracted, or otherwise provided), telephone facilities,  
 adoption agencies, private schools, hotels, lodging places, places of  
 public accommodation, amusement or resort, and other places to  
 which the general public is invited, subject only to the conditions  
 and limitations established by law, or state or federal regulation, and  
 applicable alike to all persons.

10              Civil Code §54.1(a)(1)

11       63.    California Civil Code §54.1 further provides that a violation of the Americans with  
 12 Disabilities Act of 1990 constitutes a violation of section 54.1:

13               (d) A violation of the right of an individual under the  
 14 Americans with Disabilities Act of 1990 (Public Law 101-336) also  
 15 constitutes a violation of this section, and nothing in this section  
 shall be construed to limit the access of any person in violation of  
 that act.

16              Civil Code §54.1(d)

17       64.    Plaintiff CRAIG YATES is a person within the meaning of Civil Code §54.1  
 18 whose rights have been infringed upon and violated by the defendants, and each of them, as  
 19 prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants  
 20 knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil  
 21 Code §§54 and 54.1. Plaintiff has been and continue to be denied full and equal access to  
 22 defendants' BANGKOK THAI EXPRESS. As a legal result, plaintiff is entitled to seek damages  
 23 pursuant to a court or jury determination, in accordance with California Civil Code §54.3(a) for  
 24 each day on which he visited or have been deterred from visiting the BANGKOK THAI  
 25 EXPRESS because of his knowledge and belief that the subject restaurant is inaccessible to  
 26 persons with disabilities.

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1 California Civil Code §54.3(a) provides:

2 Any person or persons, firm or corporation, who denies or interferes  
 3 with admittance to or enjoyment of the public facilities as specified  
 4 in Sections 54 and 54.1 or otherwise interferes with the rights of an  
 5 individual with a disability under Sections 54, 54.1 and 54.2 is  
 6 liable for each offense for the actual damages and any amount as  
 7 may be determined by a jury, or the court sitting without a jury, up  
 to a maximum of three times the amount of actual damages but in  
 no case less than . . . one thousand dollars (\$1,000) and . . .  
 attorney's fees as may be determined by the court in addition  
 thereto, suffered by any person denied any of the rights provided in  
 Sections 54, 54.1 and 54.2.

8 Civil Code §54.3(a)

9 65. On or about June 4, 2013 and August 8, 2013, plaintiff CRAIG YATES  
 10 suffered violations of Civil Code §§54 and 54.1 in that plaintiff CRAIG YATES was denied  
 11 access to the entrance and restrooms and other public facilities as stated herein at the BANGKOK  
 12 THAI EXPRESS and on the basis that plaintiff CRAIG YATES was a person with physical  
 13 disabilities.

14 66. As a result of the denial of equal access to defendants' facilities due to the acts  
 15 and omissions of defendants, and each of them, in owning, operating and maintaining these  
 16 subject public facilities, plaintiff CRAIG YATES suffered violations of plaintiff's civil rights,  
 17 including but not limited to rights under Civil Code §§51, 52, 54, 54.1, and 54.3, *et seq.* And,  
 18 plaintiff CRAIG YATES suffered bodily injury on or about June 4, 2013 and August 8, 2013,  
 19 including, but not limited to, fatigue, stress, strain and pain in wheeling and attempting to and/or  
 20 transferring up, on, down, to, over, around and through architectural barriers. Specifically, as a  
 21 legal result of defendants negligence in the design, construction and maintenance of the existing  
 22 women's restroom by not moving the table in it, which blocks the water closet, plaintiff suffered  
 23 continuous, repetitive and cumulative trauma to his right upper extremity while attempting to  
 24 reach up, over and to the side to empty his leg bag and then to flush the toilet.

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1       67. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,  
2 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,  
3 embarrassment, upset, anger, frustration, disappointment and worry, expected and naturally  
4 associated with a person with physical disabilities encountering architectural barrier(s) as stated  
5 herein and being denied access, all to his damages as prayed hereinafter in an amount within the  
6 jurisdiction of this court. No claim is being made for mental and emotional distress over and  
7 above that is usually associated with the encountering of architectural barriers and legally  
8 resulting in adverse experiences. No expert testimony regarding this usual mental and emotional  
9 distress will be presented at trial in support of the claim for damages.

10       68. Plaintiff has been damaged by defendants', and each of their, wrongful conduct  
11 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's  
12 rights as a person or an entity that represents persons with physical disabilities on or about June 4,  
13 2013 and August 8, 2013, and on a continuing basis since then, including statutory damages, a  
14 trebling of all of actual damages, general and special damages available pursuant to §54.3 of the  
15 Civil Code according to proof.

16       69. As a result of defendants', and each of their, acts and omissions in this regard,  
17 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce  
18 plaintiff's rights and enforce the provisions of the law protecting access for persons with physical  
19 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to  
20 the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all  
21 reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,  
22 plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to  
23 compel the defendants to make their facilities accessible to all members of the public with  
24 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to  
25 the provisions of §1021.5 of the Code of Civil Procedure.

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1 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**  
 2 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**  
 3 (On Behalf of Plaintiff CRAIG YATES, and Against Defendants BANGKOK THAI  
 4 EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS; and  
 5 DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE  
 6 KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, inclusive)  
 7 (Health & Safety Code §19955, *et seq.*)

8 70. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
 9 the allegations contained in paragraphs 1 through 69 of this complaint.

10 71. Health & Safety Code §19955 provides in pertinent part:

11 The purpose of this part is to insure that public accommodations or  
 12 facilities constructed in this state with private funds adhere to the  
 13 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5  
 14 of Title 1 of the Government Code. For the purposes of this part  
 15 “public accommodation or facilities” means a building, structure,  
 16 facility, complex, or improved area which is used by the general  
 17 public and shall include auditoriums, hospitals, theaters, restaurants,  
 18 hotels, motels, stadiums, and convention centers. When sanitary  
 19 facilities are made available for the public, clients or employees in  
 20 such accommodations or facilities, they shall be made available for  
 21 the handicapped.

22 72. Health & Safety Code §19956, which appears in the same chapter as §19955,  
 23 provides in pertinent part, “accommodations constructed in this state shall conform to the  
 24 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government  
 25 Code . . .” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all  
 26 public accommodations constructed or altered after that date. On information and belief, portions  
 27 of the BANGKOK THAI EXPRESS and/or of the building(s) were constructed and/or altered  
 28 after July 1, 1970, and substantial portions of the BANGKOK THAI EXPRESS and/or the  
 building(s) had alterations, structural repairs, and/or additions made to such public -  
 accommodations after July 1, 1970, thereby requiring said restaurant and/or building to be subject  
 to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration,  
 structural repairs or additions per Health & Safety Code §19959.

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1       73. Pursuant to the authority delegated by Government Code §4450, *et seq*, the State  
2 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,  
3 1982, Title 24 of the California Building Standards Code adopted the California State Architect's  
4 Regulations and these regulations must be complied with as to any alterations and/or  
5 modifications of BANGKOK THAI EXPRESS and/or the building(s) occurring after that date.  
6 Construction changes occurring prior to this date but after July 1, 1970 triggered access  
7 requirements pursuant to the "ASA" requirements, the American Standards Association  
8 Specifications, A117.1-1961. On information and belief, at the time of the construction and  
9 modification of said building, all buildings and facilities covered were required to conform to  
10 each of the standards and specifications described in the American Standards Association  
11 Specifications and/or those contained in the California Building Code.

12       74. Restaurants such as the BANGKOK THAI EXPRESS are "public accommodations  
13 or facilities" within the meaning of Health & Safety Code §19955, *et seq*.

14       75. As a result of the actions and failure to act of defendants, and as a result of the  
15 failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied  
16 plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil  
17 rights and plaintiff's rights as a person with physical disabilities to full and equal access to public  
18 facilities.

19       76. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,  
20 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's  
21 civil rights and enforce provisions of the law protecting access for the persons with physical  
22 disabilities and prohibiting discrimination against the persons with physical disabilities, and to  
23 take such action both in plaintiff's own interests and in order to enforce an important right  
24 affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all  
25 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure  
26 §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953  
27 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and  
28 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).

1 Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

2 77. Plaintiff seeks injunctive relief for an order compelling defendants, and each of  
 3 them, to make the subject place of public accommodation readily accessible to and usable by  
 4 persons with disabilities.

5 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND  
 6 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES  
 7 AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET  
 8 SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

9 (On Behalf of Plaintiff CRAIG YATES, and Against Defendants BANGKOK THAI  
 EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS; and  
 DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE  
 KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, inclusive)  
 (Civil Code §51, 51.5)

10 78. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
 11 the allegations contained in paragraphs 1 through 77 of this complaint.

12 79. Defendants' actions and omissions and failure to act as a reasonable and prudent  
 13 public accommodation in identifying, removing and/or creating architectural barriers, policies,  
 14 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The  
 15 Unruh Act provides:

16       This section shall be known, and may be cited, as the Unruh  
 17 Civil Rights Act.

18       All persons within the jurisdiction of this state are free and  
 19 equal, and no matter what their sex, race, color, religion, ancestry,  
 20 national origin, or **disability** are entitled to the full and equal  
 21 accommodations, advantages, facilities, privileges, or services in all  
 22 business establishments of every kind whatsoever.

23       This section shall not be construed to confer any right or  
 24 privilege on a person that is conditioned or limited by law or that is  
 25 applicable alike to persons of every sex, color, race, religion,  
 26 ancestry, national origin, or **disability**.

27       Nothing in this section shall be construed to require any  
 28 construction, alteration, repair, structural or otherwise, or  
 29 modification of any sort whatsoever, beyond that construction,  
 30 alteration, repair, or modification that is otherwise required by other  
 31 provisions of law, to any new or existing establishment, facility,  
 32 building, improvement, or any other structure . . . nor shall anything  
 33 in this section be construed to augment, restrict, or alter in any way  
 34 the authority of the State Architect to require construction,  
 35 alteration, repair, or modifications that the State Architect otherwise  
 36 possesses pursuant to other . . . laws.

37       ///

1                   A violation of the right of any individual under the  
 2 Americans with Disabilities Act of 1990 (Public Law 101-336) shall  
 3 also constitute a violation of this section.

4 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the  
 5 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the  
 6 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or  
 7 failing to act to identify and remove barriers can be construed as a “negligent per se” act of  
 defendants, and each of them.

8               80.     The acts and omissions of defendants stated herein are discriminatory in nature and  
 9 in violation of Civil Code §51.5:

10               No business establishment of any kind whatsoever shall  
 11 discriminate against, boycott or blacklist, refuse to buy from, sell to,  
 12 or trade with any person in this state because of the race, creed,  
 13 religion, color, national origin, sex, or **disability** of the person or of  
 the person’s partners, members, stockholders, directors, officers,  
 managers, superintendents, agents, employees, business associates,  
 suppliers, or customers.

14               As used in this section, “person” includes any person, firm  
 15 association, organization, partnership, business trust, corporation,  
 limited liability company, or company.

16               Nothing in this section shall be construed to require any  
 17 construction, alteration, repair, structural or otherwise, or  
 18 modification of any sort whatsoever, beyond that construction,  
 19 alteration, repair or modification that is otherwise required by other  
 20 provisions of law, to any new or existing establishment, facility,  
 21 building, improvement, or any other structure . . . nor shall anything  
 in this section be construed to augment, restrict or alter in any way  
 the authority of the State Architect to require construction,  
 alteration, repair, or modifications that the State Architect otherwise  
 possesses pursuant to other laws.

22               81.     Defendants’ acts and omissions as specified have denied to the plaintiff full and  
 23 equal accommodations, advantages, facilities, privileges and services in a business establishment,  
 24 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil  
 25 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, “A  
 26 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public  
 27 Law 101-336) shall also constitute a violation of this section.”

28               ///

1 Plaintiff accordingly incorporates the entirety of his above cause of action for violation of the  
 2 Americans with Disabilities Act at ¶48, *et seq.*, as if replied herein.

3       82.     As a result of the denial of equal access to defendants' facilities due to the acts and  
 4 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
 5 public facilities, plaintiff CRAIG YATES suffered violations of plaintiff's civil rights, including  
 6 but not limited to rights under Civil Code §§51, 52, 54, 54.1, and 54.3, *et seq.* And, plaintiff  
 7 CRAIG YATES suffered bodily injury on or about June 4, 2013 and August 8, 2013, including,  
 8 but not limited to, fatigue, stress, strain and pain in wheeling and attempting to and/or transferring  
 9 up, on, down, to, over, around and through architectural barriers. Specifically, as a legal result of  
 10 defendants negligence in the design, construction and maintenance of the existing women's  
 11 restroom by not moving the table in it, which blocks the water closet, plaintiff suffered  
 12 continuous, repetitive and cumulative trauma to his right upper extremity while attempting to  
 13 reach up, over and to the side to empty his leg beg and then to flush the toilet.

14       83.     Further, plaintiff CRAIG YATES suffered emotional distress, mental  
 15 distress, mental suffering, mental anguish, which includes, but is not limited to, shame,  
 16 humiliation, embarrassment, upset, anger, frustration, disappointment and worry, expectedly and  
 17 naturally associated with a person with physical disabilities encountering architectural barrier(s)  
 18 as stated herein and being denied access, all to his damages as prayed hereinafter in an amount  
 19 within the jurisdiction of this court. No claim is being made for mental and emotional distress  
 20 over and above that is usually associated with the encountering of architectural barriers and  
 21 legally resulting in adverse experiences. No expert testimony regarding this usual mental and  
 22 emotional distress will be presented at trial in support of the claim for damages.

23       84.     Plaintiff CRAIG YATES is entitled to the rights and remedies of §52(a) of the  
 24 Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to  
 25 mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is  
 26 allowed by statute, according to proof if deemed to be the prevailing party.

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1 **PRAYER:**

2 Plaintiff prays that this court award damages and provide relief as follows:

3 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A  
4 PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH  
5 DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**6 (On Behalf of Plaintiff CRAIG YATES, and Against Defendants BANGKOK THAI  
7 EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS; and  
8 DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE  
9 KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, inclusive)  
10 (42 U.S.C. §12101, *et seq.*)11 1. For injunctive relief, compelling defendants BANGKOK THAI EXPRESS,  
12 INC., a California Corporation dba BANGKOK THAI EXPRESS; and DONALD J.  
13 KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE KELLEHER FAMILY  
14 TRUST of 1990, u/d/t dated July 14, 1990, inclusive, to make the BANGKOK THAI  
15 EXPRESS, located at 857 4<sup>th</sup> Street, San Rafael, California, readily accessible to and usable by  
16 individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable  
17 modifications in policies, practice, eligibility criteria and procedures so as to afford full access  
18 to the goods, services, facilities, privileges, advantages and accommodations being offered.19 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed  
20 the prevailing party; and

21 3. For such other and further relief as the court may deem proper.

22 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND  
23 EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1  
24 AND 54.3, *ET SEQ.***25 (On Behalf of Plaintiff CRAIG YATES, and Against Defendants BANGKOK THAI  
26 EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS; and  
27 DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE  
28 KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, inclusive)  
(California Civil Code §§54, 54.1, 54.3, *et seq.*)29 1. For injunctive relief, compelling defendants BANGKOK THAI EXPRESS,  
30 INC., a California Corporation dba BANGKOK THAI EXPRESS; and DONALD J.  
31 KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE KELLEHER FAMILY  
32 TRUST of 1990, u/d/t dated July 14, 1990, inclusive, to make the BANGKOK THAI  
33 EXPRESS, located at 857 4<sup>th</sup> Street, San Rafael, California, readily accessible to and usable by  
34 individuals with disabilities, per state law.

1       2.    Statutory damages as afforded by Civil Code §54.3 for the date of incident and  
2 for each occasion on which plaintiff was deterred from returning to the subject public  
3 accommodation.

4       3.    Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure  
5 §1021.5, if plaintiffs are deemed the prevailing party;

6       4.    Treble damages pursuant to Civil Code §54.3;

7       5.    General damages according to proof;

8       6.    For all costs of suit;

9       7.    Prejudgment interest pursuant to Civil Code §3291; and

10      8.    Such other and further relief as the court may deem just and proper.

11 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE  
12 SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE  
13 §19955, ET. SEQ.**

14 (On Behalf of Plaintiff CRAIG YATES, and Against Defendants BANGKOK THAI  
15 EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS; and  
16 DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE  
17 KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, inclusive)  
(Health & Safety code §19955, *et seq.*)

18      1.    For injunctive relief, compelling defendants BANGKOK THAI EXPRESS,  
19 INC., a California Corporation dba BANGKOK THAI EXPRESS; and DONALD J.  
20 KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE KELLEHER FAMILY  
21 TRUST of 1990, u/d/t dated July 14, 1990, inclusive, to make the BANGKOK THAI  
22 EXPRESS, located at 857 4<sup>th</sup> Street, San Rafael, California, readily accessible to and usable by  
23 individuals with disabilities, per state law.

24      2.    For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,  
25 alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

26      3.    For all costs of suit;

27      4.    For prejudgment interest pursuant to Civil Code §3291;

28      5.    Such other and further relief as the court may deem just and proper.

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1 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**  
2 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**  
3 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**  
4 **CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

5 (On Behalf of Plaintiff CRAIG YATES, and Against Defendants BANGKOK THAI  
6 EXPRESS, INC., a California Corporation dba BANGKOK THAI EXPRESS; and  
7 DONALD J. KELLEHER and DONNA B. KELLEHER, Co-Trustees of THE  
8 KELLEHER FAMILY TRUST of 1990, u/d/t dated July 14, 1990, inclusive)  
9 (California Civil Code §§51, 51.5, *et seq.*)

10 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident  
11 and for each occasion on which plaintiff was deterred from returning to the subject public  
12 accommodation;

13 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiff is deemed the  
14 prevailing party;

15 3. General damages according to proof;

16 4. Treble damages pursuant to Civil Code §52(a);

17 5. For all costs of suit;

18 6. Prejudgment interest pursuant to Civil Code §3291; and

19 7. Such other and further relief as the court may deem just and proper.

20 Dated: November 4, 2013

21 THOMAS E. FRANKOVICH,  
22 ***A PROFESSIONAL LAW CORPORATION***

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30 By: \_\_\_\_\_/s/Thomas E. Frankovich \_\_\_\_\_  
31 Thomas E. Frankovich  
32 Attorneys for Plaintiff CRAIG YATES

## **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: November 4, 2013

THOMAS E. FRANKOVICH,  
*A PROFESSIONAL LAW CORPORATION*

By: \_\_\_\_\_/s/Thomas E. Frankovich \_\_\_\_\_  
Thomas E. Frankovich  
Attorneys for Plaintiff CRAIG YATES